

REMARKS

Claims 1 and 7 have been amended, and dependent claim 6 has been cancelled. New independent claim 8 has been added. Thus, claims 1-5 and 7-8 are presented for consideration on their merits.

Applicant discloses, and claims with varying degrees of specificity, an insulating sleeve (13-15) for use with a drinking glass, such as a wine glass, having a stem with a foot and a bowl. Applicant's sleeve has an upper opening (17) and a lower opening (18), and an elongate closure member (zip 16). The upper opening comprises an upper end of a circumferential band (20) that is elastic, and grips the bowl of the glass to hold the insulating sleeve in position. The elasticity also enables applicant's insulating sleeve to be used with wine glasses with bowls of different sizes.

The lower opening in applicant's insulating sleeve is somewhat elastic, and enables the lower opening to fit around the stem (21) of a wine glass. When the zip is opened, the sleeve can easily be fitted about a wine glass. When the zip is closed, the insulating sleeve fits snugly about the wine glass.

Independent claims 1, 7 and 8 stress the structural features of applicant's insulating sleeve that is configured to fit about wine glasses of different shapes; i.e. for red wines, white wines, sparkling wines or champagne, etc. Dependent claims 2-5 describe such features, in specific detail.

The insulating sleeve of Mogil, which fits about a squeezable plastic container having a cylindrical section, is similar in principle, but lacks essential features when compared to the claims of the present invention. For example, the insulating sleeve of Mogil does possess an upper opening and arguably a lower opening as the Examiner contends. The lower opening of Mogil, however, is not adapted to extend about the stem of a wine glass.

The independent claims of the present application now include the feature that the lower opening extends about the stem of the glass in use. Following the Examiner's argument of turning the insulated sleeve of Mogil upside down, what was originally the upper opening could extend about the stem of a glass. This would place the base wall of the insulating sleeve of Mogil adjacent the bowl of the glass and extend across the region closing the glass. The limitation has been added that the upper opening extends about the bowl of the glass, leaving the glass open, to further distinguish from Mogil.

In simple terms, the insulating sleeve of the present invention, as defined in independent claims 1, 7 and 8 includes two openings, one of which is the upper opening which receives the bowl of the glass but leaves the glass open, and a lower opening which is temporarily enlargeable to allow passage of the stem and foot of the glass therethrough, before the releasable closure means (zip) is operated to reduce the size of the lower opening.

The claims, as advanced by applicant, cannot be accorded any construction whatsoever by the Examiner, but rather must be construed by the Examiner only as broadly as one skilled in the art would construe them, *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*).

Applying this principle to Mogil, it strains credulity that the skilled artisan, in looking at the relied-upon insulated sleeve, might be confused into thinking it may be used as defined in the present claims for a glass of the type having a stem, foot and bowl. Claim terms must be given the ordinary and accustomed meanings they convey to the skilled artisan, *Phillips*. Absent evidence to support the proffered esoteric interpretation that an insulated sleeve for a water bottle nonetheless can, in the mind of the skilled artisan, be easily adapted to use in relation to a glass having a stem, foot and bowl, it would appear that rejection of claims 1 and 7 is clearly erroneous.

A new claim, claim 8, has also been added to the application. The new claim defines the insulating sleeve of the present invention in a more limited form, and clearly distinguishes over Mogil, and/or the combined “teachings” of Mogil and Kimishima.

The combination of Mogil and Kimishima, is unsupportable in law and in practice. Neither patent discloses a teaching, or suggestion, as to how these dissimilar disclosures could be combined, absent hindsight from applicant's disclosure.

Furthermore, Mogil, as admitted by the Examiner, does not specifically mention that the drinking bottle is made from glass, as claimed. Such admission minimizes, or overlooks, the critical fact that Mogil “teaches away” from using glass. Mogil is replete with references to a “thin walled plastic bottle” in column 1, line 31; “ squeezable container” in column 5, lines 29-31 and column 6, lines 51-52, and lines 65-66. No suggestion is made of using a glass container, which would fly in the face of the objectives stated by Mogil.

The pouch described in Mogil is intended to insulate a container having a round

cylindrical body, or at least a round cylindrical section. The section need not be circular, but could be oval, elliptical, etc., as noted in column 9, lines 5-10. However, Mogil does not mention an insulating sleeve that is adapted to extend about a drinking glass having a stem with a foot and a bowl that is markedly different in shape.

In summary, claims 1-5 and 7-8, as presently constituted, define patentable subject matter over the cited prior art documents. Prompt and favorable consideration of the instant Amendment is in order.

Respectfully submitted,

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